



[2022] JMSC Civ. 11

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2019CV03811**

<b>BETWEEN</b>	<b>CLAUDIA CUNNINGHAM</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>COMMISSIONER OF POLICE</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL OF JAMAICA</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**IN OPEN COURT**

**Mr. Hugh Wildman & Ms. Indira Patmore instructed by Hugh Wildman & Company for the Claimant.**

**Ms. Faith Hall and Mr. Jovan Bowes instructed by the Director of State Proceedings for the Defendants.**

**Heard: 13<sup>th</sup> December 2021 & 28<sup>th</sup> January, 2022**

**Declaratory Relief- Procedure for Dismissal from the Jamaica Constabulary Force Who has the power to dismiss a member of the Jamaica Constabulary Force- Sections 90(1), 125, 130, 131 Jamaica (Constitution) Order in Council 1962- Power to delegate a constitutional power vested in the Governor General- Section 38 Police Service Regulations-Section 5 Jamaica Constabulary Force Act- Effect of non- re-enlistment in the Jamaica Constabulary Force Act**

**WOLFE-REECE, J**

**INTRODUCTION**

[1] The Claimant, Claudia Cunningham is aggrieved by the purported actions of the Commissioner of Police (COP) from 2002 and contends that she is still a member of the Jamaica Constabulary Force. She has filed a Fixed Date Claim form against the COP and the Attorney General of Jamaica, (1<sup>st</sup> & 2<sup>nd</sup> Defendants respectively), in this Court which was supported by an affidavit. She is claiming the following declarations be made;

1. *A Declaration that the Claimant could only have been legally dismissed from the Jamaica Constabulary Force by the Commissioner of Police exercising the powers under the Jamaica Constabulary Force Act not to relist the Claimant at the end of her service under Section 5 of the Jamaica Constabulary Force Act.*
2. *A Declaration that only the Commissioner of Police can legally terminate the service of the Claimant as a Constable of the Jamaica Constabulary Force*
3. *A Declaration that the Commissioner of Police has taken no steps pursuant to Section 5 of the Jamaica Constabulary Force Act to terminate the Claimant as a serving member of the Jamaica Constabulary Force.*
4. *A Declaration that the Claimant remains a Constable within the Jamaica Constabulary Force having appointed pursuant to section 5 of the Constabulary Force Act.*
5. *Such further relief as this Honourable Court thinks fit.*

[2] At the commencement of this hearing an application was made by the Claimant to amend her Fixed Date Claim Form by adding a further declaration. Having heard from both Counsel. I granted the amendment which reads as follows;

*A Declaration that the Defendants were/ (are) not permitted to dismiss the claimant from the Jamaica*

*Constabulary Force by section 38 of the Police Service Regulations without strict compliance of section 131(4) of the Constitution of Jamaica.*

**Background**

**Undisputed Facts**

- [3] The Claimant was enlisted in the Jamaica Constabulary Force (JCF) on March 12, 1993. During her employment she was stationed at the Constant Spring Police Station and the Narcotics Division.
- [4] On February 26, 1998, (arising out of an incident which occurred on the January 3, 1998), she was arrested and charged with the offences of aiding and abetting Illegal possession of firearm and Aiding and abetting Illegal possession of ammunition.
- [5] As a result of this charge, the Claimant was placed on suspension. On 9<sup>th</sup> March, 1999, the case was dismissed for want of prosecution in the High Court Division of the Gun Court in the parish of St. Elizabeth. On 17<sup>th</sup> May, 1999 the Claimant was reinstated and she was then transferred the Kingston Eastern Division.
- [6] On the alleged instructions of the then Director of Public Prosecutions, the Claimant was summoned and placed back before the Court and indicted along with Junior Blair for the same offences. On August 21, 2002 the Claimant pleaded guilty to each count and was sentenced to \$60,000 or 12 months imprisonment and \$20,000 or 12 months imprisonment on each charge respectively.
- [7] On 21<sup>st</sup> August, 2002 she was again placed on suspension. It is the events that follow that have laid the foundation on which the Claimant bases her claim.

**The Claimants Case**

- [8] The Claimant filed an affidavit in support of her Fixed Date Claim Form on October 18, 2019. She states she was placed on suspension in 2002 until further notice.

Whilst she was on suspension a colleague called her and told her she was dismissed from the JCF.

- [9] She contends that she did not receive any written notice of being dismissed. However, upon receiving this information she made contact with the General office at the Eastern Division and made enquiries of one Sergeant Forsythe who indicated he did not know anything of that report, nor had he received any document stating so. The Claimant further expressed that to date she has not received any formal letter or correspondence from the COP indicating that her enlistment as a member of the JCF was terminated.
- [10] The Claimant's affidavit reveals that from before 2004 to 2019 she has written several letters to the COP but has received no redress. During the period she sought the intervention of the then Public Defender, Mr. Howard Hamilton, who wrote to the then Commissioner Mr. Francis Forbes. She also sought the intervention of the Jamaica Police Federation (The Federation) to have dialogue with the COP, and there was a meeting however she says she was asked to stay outside. To date she has not had the issue resolved.
- [11] The Claimant therefore asserts that she is still a serving member of the JCF as she was never served with a notice of termination whether in writing or orally.

### **Defendants Case**

- [12] The Defendants case is based on the affidavits of Andrew Lewis and the affidavit of Alvena Ewan. The defendants contend after the conviction and suspension of the Claimant, the COP by letter dated November 25, 2002 sought the approval of the Police Services Commission (PSC) for the dismissal of the Claimant. By way of letter to the COP, the PSC approved the dismissal of the Claimant from the JCF ***"..with effect from August 21, 2002 in accordance with the provisions of Regulation 38 of the Police Service Regulations 1961, consequent on her convictions."***

[13] The Defendants contend that the Claimant was advised of her dismissal from the JCF by a letter dated March 31, 2003 which claimant denies receiving and subsequently on April 3, 2003 the Claimants dismissal was published in the Force Orders and gazetted.

### **Submissions of Counsel**

[14] I have received written submissions from the respective counsel in the matter and I have heard their oral submissions. I have read their respective submissions, cases in support and have taken all factors into consideration in determining the matter before me. However, for the sake of brevity I have decided not to recite their submissions but simply to address the issues raised in my analysis and conclusion.

### **Law**

[15] The legislation considered for the determination of the issues are as follows;

- i. Jamaica (Constitution) Order in Council, 1962 Chapter I & Chapter IX Parts 1 & 2 (hereafter referred to as the “**Constitution**”)
- ii. Constabulary Force Act
- iii. The Constitution of Jamaica Police Service Regulations 1961 (hereinafter referred to as the “**Regulations**”)
- iv. Delegation of Functions (Police Service) Order, 1964

[16] Section 130 of the Constitution addresses specifically the appointment of police officers. It states:

*130. Section 125 of this Constitution (with the substitution therein of the words "the Police Service Commission" for the words "the Public Service Commission" wherever the same occur and of the words "the Public Service Commission" for the words "the Police Service Commission" in subsection (2) thereof) shall apply in relation to police officers as it applies in relation to other public officers.*

- [17] Section 125 encapsulates the procedure for appointment & removal of Public Officers;

125.-(1) Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding office. or acting in any such offices is hereby vested in the Governor-General acting on the advice of the Public Service Commission.

(2) Before the Public Service Commission advises the appointment to any public office of any person holding or acting in any office power to make appointments to which is vested by this Constitution in the Governor General acting on the advice of the Judicial Service Commission or the Police Service Commission, it shall consult with the Judicial Service Commission or the Police Service Commission, as the case may be.

(3) Before the Governor-General acts in accordance with the advice of the Public Service Commission that any public officer should be removed or that any penalty should be imposed on him by way of disciplinary control, he shall inform the officer of that advice and if the officer then applies for the case to be referred to the Privy Council, the Governor-General shall not act in accordance with the advice but shall refer the case to the Privy Council accordingly : Provided that the Governor-General, acting on the advice of the Commission, may nevertheless suspend that officer from the exercise of his office pending the determination of the reference to the Privy Council.

(4) Where a reference is made to the Privy Council under the provisions of subsection (3) of this section, the Privy Council shall consider the case and shall advise the Governor-General what action should be taken in respect of the officer, and the Governor-General shall then act in accordance with such advice.

- [18] The Constitution Section 131 empowers the Governor General to delegate the functions given to him as follows;

131.-(1) The Governor-General, acting on the advice of the Police Service Commission, may by instrument under the Broad Seal direct that, subject to such conditions as may

*be specified in that instrument, power to make appointments to such offices, being offices to which this section applies, as may be so specified and power to remove and power to exercise disciplinary control over persons holding or acting in those offices, or any of those powers shall (without prejudice to the exercise of such power by the Governor-General acting on the advice of the Police Service Commission) be exercisable by such one or more members of the Police Service Commission or by such other authority or public officer as may be so specified.*

*(2) The offices to which this section applies are the offices of all police officers not above the rank of inspector.*

*(3) In any case where an appointment is to be made by virtue of an instrument made under this section and the person to be appointed holds or is acting in any office power to make appointments to which is-vested by this Constitution in the Governor-General acting on the advice of the Judicial Service Commission or the Public Service Commission, the person or authority specified in the said instrument shall consult with the Judicial Service Commission or the Public Service Commission, as the case may be, before making the appointment.*

*(4) Where, by virtue of an instrument made under this section, the power to remove or to exercise disciplinary control over any officer has been exercised by a person or authority other than the Governor-General acting on the advice of the Police Service Commission, the officer in respect of whom it was so exercised may apply for the case to be referred to the Privy Council, and thereupon the action of the aforesaid person or authority shall cease to have effect and the case shall be referred to the Privy Council accordingly; and the Governor-General shall then take such action in respect of that officer as the Privy Council may advise:*

*Provided that- (a) where the action of the aforesaid person or authority includes the removal of that officer or his suspension from the exercise of his office, that person or authority may nevertheless suspend him from the exercise of his office pending the determination of the reference to the Privy Council; and (b) before advising the Governor-*

General under this subsection, the Privy Council shall consult with the Police Service Commission.

- [19] Section 38 of the Police Service Regulations specifically refers to members convicted of a criminal charge as follows;

*If a member is convicted in any court of a criminal charge the commission may consider the relevant proceedings of that court and if the Commission is of the opinion that the member ought to be dismissed or subjected to some lesser punishment in respect of the offence of which he has been convicted the Commission may thereupon recommend the dismissal or other punishment of the member without the institution of any disciplinary proceedings under these Regulations.*

- [20] The Constabulary Force Act Section 5 addresses enlistment, re-enlistment and penalties;

*Sub-Officers and Constables of the Force may be enlisted for a term of five years, and no Sub-Officer or Constable of the Force, so enlisted, shall be at liberty to withdraw himself from the Force until the expiration of that term; and no Sub-Officer or Constable of the Force who has not been enlisted for a term shall be at liberty to withdraw himself from the Force until the expiration of six months from the time he shall have given notice in writing of his intention so to do to the Officer whose immediate orders he shall be and if any Sub-Officer or Constable shall so resign or withdraw himself before the expiration of such term, without the permission of the Commissioner or without such previous notice, he shall for such offence, forfeit and pay a penalty not exceeding twenty dollars, on summary conviction; and it shall be lawful for the Court, in case such penalty shall not paid to commit such person to an adult correctional centre with or without hard labour, for any period not exceeding three calendar months.*

## **Analysis & Discussion**

**Issue #1 What is the correct procedure for dismissal of a member from the JCF?**

- [21] Sections 130 & 125 of the Constitution vests the power in the Governor General acting on the advice of the Police Service Commission to make appointments to public offices, and to remove and to exercise disciplinary control over persons holding or acting in such offices.
- [22] Section 131 and the Delegation of functions (Police Service) order 1964 empowers the Governor General to delegate the powers vested in him to an authorized officer. An authorized officer is defined in the Police Service Regulations Section 2 as;
- “The Commissioner or any other Officer not below the rank of Assistant Commissioner of Police or, except in relation to a member of or above the rank of Inspector, a commanding officer.”*
- [23] Mr. Wildman has submitted that under the Jamaica Constabulary Force Act, the claimant being a police officer can only be terminated by the COP and no other body or person. He relies on Section 5 of the Jamaica Constabulary Force Act, which he says speaks to the engagement of Officers by the COP and that it’s the COP who has disciplinary control of all officers below the rank of Inspector.
- [24] On my assessment of Section 5 of the Jamaica Constabulary Force Act, I conclude that the section provides that there may be a period of enlistment for five years and it details the terms of resignation and/or withdrawal if so enlisted. This section also directs the possible penalty if an enlisted officer resigns or withdraws himself before the expiration of the term without the permission of the Commissioner.
- [25] I cannot agree with the submission of Counsel, Mr. Wildman on this point. It is patently clear that the Jamaica Constabulary Force Act Section 3(1) provides that the Governor General is charged with the establishment of the Police Service. However, it is Sections 125 & 130 of the Constitution, **(see paragraphs 16 & 17 above)**, that vests the power in the Governor General to make appointments to public office, to remove and to exercise disciplinary control over persons holding or acting in any such offices on the advice of the Police Services Commission.

[26] Having made the determination that the power to dismiss/ remove from office is vested in the Governor General, the Constitution in Section 131(1) & (2) (**See paragraph 18**) specifically gives the Governor General the authority to delegate the power vested in him, (without prejudice to the exercise of the power by the Governor General acting on the advice of the police Services Commission), to one or more members of the Police Services Commission or such other authority or public officer as may be specified.

[27] The Delegation of Functions (Police Service) Order 1964 is pursuant to section 131 stipulates the power vested in the Governor General by section 130 is exercisable by an authorized officer as defined by the Police Regulations. The Police Service Regulations section 2 defines an authorized officer as:

**The Commissioner or any other Officer not below the rank of Assistant Commissioner of police or except in relation to a member of or above the rank of Inspector, a Commanding officer.**

[28] I conclude that it is incorrect to say that the claimant could only have been legally dismissed from the Jamaica Constabulary Force by the COP exercising the powers under the Jamaica Constabulary Force Act not to relist the Claimant at the end of her service under Section 5 of the Jamaica Constabulary Force Act. I am fortified in this view that the procedure under section 5 is different from the procedure of dismissal. This was noted Sinclair-Haynes, J (as she then was) in the case **R v. The Commissioner of Police Ex-Parte Courtney Ellis, unreported Claim No. 2010HCV02186** in reference to Section 5 stated;

***“The procedure under that regime is markedly different from that of dismissal. The Police Services Regulations made under the Constitution of Jamaica govern the dismissal of a police officer from the service.”***

[29] Declarations 1 and 2 being sought by the Claimant cannot be supported by the evidence or the law and are refused.

- [30] The Claimant has stated that whilst the application for re-enlistment is pending the applicant remains a police officer. I don't accept this proposition to be accurate, if the period of enlistment has expired. Section 5 of the JCF Act provides that a contractual period of five years may be imposed. From the Claimants evidence she re-applied for enlistment as she was aware her contractual period was coming to an end. There is no right or automatic entitlement to re-enlistment.
- [31] If I am incorrect in my view that during pending re-enlistment the applicant remains a police officer after the expiration of their enlistment period. I am of the view that the Claimant in this case would have to prove that she was not lawfully dismissed.
- [32] Whilst there is no evidence that the then COP made any decision on the application for re-enlistment, it is important to note that refusal to re-enlist is not a dismissal. In the case **Corporal Glenroy Clarke v. Commissioner of Police and the Attorney General of Jamaica** [1996] 33 JLR 50 at page 52 Carey, J.A. stated

***Although the non-approval by the Commissioner of a member of the Force for re-enlistment removes the member from further service in the Force it is not a dismissal.***

In light of the accepted fact that the Claimants contractual period has come to an end and there had been no re-enlistment the Claimant cannot be deemed to still be a member of the Jamaica Constabulary Force. Further Section 5 does not provide any steps for the COP to terminate a member. Consequently, Declarations 3 & 4 are refused.

## **Issue# 2 The procedure and effect under Section 38 Police Service Regulations**

- [33] Section 38 of the Police Service Regulations (PSR) speaks to the circumstances where a serving member of the JCF has been convicted of a criminal offence. It indicates

- (i) *The Commission may consider the relevant proceedings of that court and*
- (ii) *if the Commission is of the opinion that the member ought to be dismissed or subjected to some lesser punishment in respect of the offence of which he has been convicted*
- (iii) *the Commission may thereupon recommend the dismissal or other punishment of the member without the institution of any disciplinary proceedings under these Regulations.*

**[34]** Section 38 of PSR, the COP as the delegated authority, would have to seek the recommendation of the Police Services Commission. The affidavit of Andrew Lewis filed July, 02, 2020 sets out the trajectory of events as follows:

- (i) August 21, 2002 Claimant pleaded guilty to the offences of Aiding and Abetting Illegal Possession of a Firearm and Aiding and Abetting Illegal Possession of Ammunition and was sentenced to \$60,000 or 12 months imprisonment and \$20,000 or 12 months imprisonment respectively.
- (ii) November 25, 2002 the Commissioner by way of letter outlined the circumstances of the case against the Claimant sought the approval of the Commission for the Claimant to be dismissed from the Jamaica Constabulary Force as a result of her conviction.
- (iii) March 26, 2003, a letter was sent to the Commissioner approving that the Claimant be dismissed consequent on her conviction on criminal charges with effect from 21<sup>st</sup> August 2002.

**[35]** The Claimants evidence is that no disciplinary action was ever taken against her nor was she ever brought before a disciplinary tribunal and was told she was no longer a serving member of the JCF. Section 38 of the PSR clearly empowers the Commission where the member has been convicted of a criminal offence to make

the recommendation for dismissal without any need or requirement to institute disciplinary proceedings.

- [36] Further exhibited to the affidavit of Andrew Lewis is a letter dated March 31, 2003 (the dismissal letter). The receipt of the said letter is vehemently disputed by the Claimant. There is no direct evidence of proof of service placed before this Court. However, it is not disputed that on April 3, 2003 the Claimants dismissal was published in the Jamaica Constabulary Force Orders.
- [37] The Claimant states that after pleading Guilty, she was placed on suspension. It is whilst on suspension that she was telephoned by a colleague and was told she was dismissed from the Jamaica Constabulary Force. There is no date given to the Court of when she received this call or who gave her this information. She says that having received this information she made a call to the General office and the Kingston Eastern Division and spoke with Sergeant Forsythe, who was then in charge of the office who indicated he had no knowledge of that report nor had he received any documentation. The evidence is that having received the information that the Claimant acted upon it by engaging the Public Defender, the Federation to intervene on her behalf.
- [38] The Claimant indicates that up to 2019 when she filed this claim she had still not received any formal notice of dismissal/termination. In her first affidavit she exhibited two letters which she wrote to the COP police dated August 4, 2017 & March 11, 2019 where she seeks information on her status in the JCF. There are questions as to the veracity of this assertion, as exhibited to the affidavit of Andrew Levis, on behalf of the Defendants, is the unchallenged letter signed by the Claimant to the COP dated July 14, 2003 which is headed ***Re- Dismissal of #6353 Woman Constable Cunningham from the Jamaica Constabulary Force.***
- [39] In the July14, 2003 letter signed by the Claimant, there is no mention of her never being served with dismissal/ termination letter or notice or that she had been made

aware of an alleged dismissal by a colleague. The first and last paragraphs of the letter reads:

***“I hereby with respect seek audience with the Commissioner of Police on the matter of being re-enstated in the organization”*** and

***“I am aware that the regulation makes provision for the dismissal of persons convicted of a criminal offence but I have a discover a light of hope when I read section 38 of the Public Service Regulation”***

- [40] I find that the inescapable inference is that the Claimant received the dismissal letter. She was seeking to have the decision which was made to dismiss her reversed and have some other or lesser punishment imposed as is stated in Section 38 of the PSR.
- [41] Further to that, the Claimant admits to seeking the intervention of the Public Defender who she says wrote to the then COP, Francis Forbes on her behalf. It is somewhat curious that she would be writing to enquire of her status in the JCF in 2017 & 2019 when the letter to the COP dated July 17, 2003 from then Public Defender, Mr. Howard Hamilton, seeks to move the COP to review the case of the Claimant and invited him to re consider her dismissal relying on Section 38 of the Police Services Regulations.
- [42] I find that especially in the absence of any challenge to the contents of the letter, that the Claimant having engaged the Public Defender, she provided him with all the relevant instructions and information and his letter to the COP would have been a reflection of those instructions.
- [43] There is no dispute that the Claimant also sought the assistance of the Jamaica Police Federation (The Federation). The Federation sought audience with the Commissioner on behalf of the Claimant. It is disputed by the Claimant that she was physically present in the meeting as her evidence is that she was asked to wait outside. However, even if the Claimants assertion is true I conclude that the Federation on behalf of the Claimant met with Commissioner Forbes on

September 2, 2003. It is accepted by all parties that at the end of the meeting there was no change to the decision.

- [44] I accept based on the evidence that the Federation acting on behalf of the Claimant subsequently petitioned the Governor General by way of a letter dated October 30, 2003. The Claimant denies knowing the outcome of the petition made until Defendants filed an affidavit in this claim and exhibited a letter dated April 13, 2004 written to the Chairman of the Federation which reads;

**Re: Claudia Cunningham**

***I write in response to yours dated October 30, 2003 in relation to the above-named.***

***The Privy Council at its meeting held on April 6, 2004 considered your request for a pardon to be granted to Ms. Cunningham in accordance with Section 90(1)(a) of the Constitution of Jamaica. This as a result of her being dismissed from the Jamaica Constabulary Force in accordance with the provisions of Regulation 38 of the Police Service Regulations, 1961.***

***Arising from the discussion, it was the view of the Privy Council that based on the circumstances of the case there is no basis on which a pardon could be considered.***

***It recommended this to His Excellency the Governor General who accepted the recommendation***

***Please be guided accordingly***

***Yours Sincerely***

***K.G. Sewell-Mills***

***Governor-General's Secretary (Acting)***

There has been nothing placed before this Court to say the Federation who was engaged by the Claimant to act on her behalf did not receive this letter. Nor is there any evidence from the Federation that they failed to advise the Claimant of the letter and its contents.

[45] I find that the Federations petition to the Governor General for a pardon to be granted to the Claimant was completely consistent with the approach taken by the Claimant from her July 14, 2003 letter. It was also consistent with the approach taken by the Public Defender, Mr. Howard Hamilton. The graven of each intervention was to have the decision for dismissal reversed, not that she was not served with a letter of dismissal and was uncertain of her status with the JCF.

[46] Based on the amendment granted to the Fixed Date Claim form on the morning of trial, Mr. Wildman has submitted that the Court should make a declaration that Defendants were (are) not permitted to dismiss the claimant from the JCF by section 38 Police Regulations without strict compliance of section 131(4) of the Constitution of Jamaica,

[47] The relevant section specifically states

**“that where the power to remove or to exercise disciplinary control over any officer has been exercised by a person or authority other than the Governor-General acting on the advice of the Police Service Commission, the officer in respect of whom it was so exercised may apply for the case to be referred to the Privy Council, and thereupon the action of the aforesaid person or authority shall cease to have effect and the case shall be referred to the Privy Council accordingly; and the Governor-General shall then take such action in respect of that officer as the Privy Council may advise:**

***Provided that- (a) where the action of the aforesaid person or authority includes the removal of that officer or his suspension from the exercise of his office, that person or authority may nevertheless suspend him from the exercise of his office pending the determination of the reference to the Privy Council; and (b) before advising the Governor-General under this subsection, the Privy Council shall consult with the Police Service Commission.”***

[48] I find that the declaration being sought is misguided. Section 131(4) is invoked where the power to remove or exercise disciplinary control has been exercised by

any person or authority other than the Governor General. A positive action would have to take place and upon that happening, the affected party may apply for the case to be referred to the Privy Council. If they choose to, then the action of the person or Authority will cease to have effect and the case shall be referred to the Privy Council.

[49] I therefore conclude that the procedure of dismissal in accordance with Section 38 of the Jamaica Police Service Regulations is not automatically dependent on compliance with Section 131(4) and the Declaration being sought must be refused.

[50] Section 90(1) (a) of The constitution states that;

***The Governor-General may, in Her Majesty's name and on Her Majesty's behalf-***

***(a) grant to any person convicted of any offence against the law of Jamaica a pardon, either free or subject to lawful conditions;***

***(b).....***

***(c).....***

***(2) In the exercise of the powers conferred on him by this section the Governor-General shall act on the recommendation of the Privy Council.***

[51] The evidence reveals and I accept that the Claimant, Claudia Cunningham, through the intervention of the Jamaica Police Federation and by way of a letter dated October 30, 2003 did seek to engage the Governor General by seeking a request for a pardon in accordance with the Section 90(1) (a). The Privy Council met and considered her application and concluded that there was no basis upon which a pardon could be considered. That recommendation was accepted by the Governor General.

[52] I find no instance in the circumstances placed before me where the COP failed to follow procedures laid down by Constitution of Jamaica and the Police Service Regulations.

**DISPOSITION**

- i) A Declaration that the Claimant could only have been legally dismissed from the Jamaica Constabulary Force by the Commissioner of Police exercising the powers under the Jamaica Constabulary Force Act not to relist the Claimant at the end of her service under Section 5 of the Jamaica Constabulary Force Act is refused
- ii) A Declaration that only the Commissioner of Police can legally terminate the service of the Claimant as a Constable of the Jamaica Constabulary Force is refused
- iii) A Declaration that the Commissioner of Police has taken no steps pursuant to Section 5 of the Jamaica Constabulary Force Act to terminate the Claimant as a serving member of the Jamaica Constabulary Force is refused
- iv) A Declaration that the Claimant remains a Constable within the Jamaica Constabulary Force having appointed pursuant to Section 5 of the Constabulary Force Act is refused.
- v) A Declaration that the Defendants were/ (are) not permitted to dismiss the Claimant from the Jamaica Constabulary Force by section 38 of the Police Service Regulations without strict compliance with Section 131(4) of the Constitution of Jamaica is refused
- vi) Costs awarded to the Defendants to be agreed or taxed

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S. Wolfe-Reece, J